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THE  
CASE  
OF  
JAMES FOUBERT, and  
CHARLOTTE his Wife, *Appelts.*  
and Others, — — —  
AGAINST  
THO. TURST, and Others, - - - *Respondts.*

**T**HE Appellants and Respondents are French Protestants.

THE Respondent Turst Married in France, Susan the Daughter of Anne Menois, they having first Entered into and Executed a Marriage-Contract in Writing, Dated the 4th of April, 1665: By which, among other Articles or Covenants,

It is Agreed,

1st. THAT there should be a Community of Goods and Estates between them, pursuant to the Custom of Paris: Nevertheless, That the Debts of each Party before Marriage, shall be paid out of their respective Estates, and not out of the Community.

2dly. THAT One Third of her Portion, which in the Whole was 1200 Livres, should be brought into the said Community; and the other Two Thirds should be as a Real Estate, and descend to Susan and her Heirs.

3dly. THAT she might at any time Renounce the said Community, and in that Case should have again all that she brought in Marriage, and all that should fall to her during the Marriage.

THE Mariage took Effect in France, and the Respondent received the said Portion; and they continued to Trade in Wines there, till the latter end of the Year 1689. when, by reason of the Persecution, they left France. In that time, they gained an Estate in Community together, to the Value of 15000 Pounds Sterling, and brought with them into England to the Value of 6000 Pounds of it.

IN 1694 Susan died in England without Issue, having never had any, nor ever Renounced the said Community. Thereupon, the Appellants, as next of Kin, or next Heirs to the said Susan, are, according to the said Marriage-Contract, intitled to a Moiety of what remained of the Estate gained in Community, with Interest till Payment thereof; and also to the said Summ of 800 Livres, and Interest, for the said Susan's Separate Estate.

THE Appellants Exhibited their Bill in the High Court of Chancery, against the Respondents, to have an Account of the said Estate in Community, and to have Satisfaction for a Moiety thereof, and Interest, and for the said 800 Livres, and Interest, according to the said Agreement. And the Appellants having Proved the said Contract, the said Cause was Heard before the Lord Keeper in Michaelmas Term, 1702. when His Lordship Decreed the said Marriage

riage-Articles or Contract should be Observed as to the said 800 Livres and Interest, Decreeing the *Respondent* to Account for the same.

B U T as to the said Estate in Common, Declared the *Appellants* had no Right thereto ; the said Marriage-Contract, as to such part of the said Estate, amounting to no more, than that the same should go according to the Custom of the City of *Paris* ; which, if the *Respondent* and his Wife had continued there, would have effected the same thing : but coming afterwards into *England*, their Personal Estate here was not to be governed according to the Custom of *Paris*, and therefore as to so much, Dismissed the *Appellant's Bill*.

F R O M which said last mention'd part of the said Decree the *Appellants* haveAppealed ; humbly conceiving, that by the Laws and Usage of Nations, and Natural Reason and Equity, allowed as to the said 800 Livres in the said Decree, although where the Parties to a Marriage depend upon the Law or Custom of the Place where they marry, the same Custom or Effect thereof will not follow or bind them in another Country ; yet all Lawful Contracts, as well of Marriage as other, ought to be fully performed between the Parties thereto, and their Representatives, according to the Intent of the Parties appearing in such Contracts, notwithstanding any change of Habitation, and although such Contract to avoid reciting the Custom of any Place at large, doth, in respect of some part only of the Estate intended to be settled, referr to such Custom ; yet that part of the Agreement which has reference to the Custom ought as well to be performed as the other part, wheresoever the Parties which Contract remove their Dwelling, the Marriage not having proceeded on the Custom in general, but on an express Contract, wherein the Custom did not operate, but by the Agreement and Admission of the Parties, who, as to part of their Substance only, incorporated the Terms of the said Custom, and made them part of their Agreement.

A N D the said *Articles or Contract* (it is conceived) ought to be Decreed to be entirely Observed, for the Reasons following.

*1st Reason.* F O R that the Parties waved or derogated from the said Custom of *Paris* in their said Marriage-Agreement, in the several Particulars following ; (*Viz.*)

*1st.* B Y the City Laws or Custom of *Paris*, the respective Debts of the Husband and Wife contracted before Marriage, are afterwards to be paid out of the Community ; but here it is expressly Agreed, That the Debts of each Party shall be paid out of each Party's own Estate.

*2dly.* W H E R E there is no Contract in Writing to the contrary, the whole Estate of both Parties is to be in Common ; but here it is Agreed, That only One Third of the Portion shall enter into the Community.

*3dly.* A LL such Estate as during the Marriage falls either to the Husband or the Wife, is, by the said Custom to be in Common ; but here it is Agreed, That whatever should fall or come to the Wife during the Marriage, shall, if she Renounceth the Community, go to her and her Heirs, Exclusively of the Husband and his Heirs.

*4thly.* T H E Heirs of the Wife could not by the Custom (though she might) Renounce the Community ; but, on the contrary, by this Contract or Agreement, her Heirs may : and if she does Renounce ; by the Custom, she can't take back what she brought : but it's expressly Agreed here she shall, and also whatever should fall to her during the Marriage.

*2d Reason.* A N D also, for that the *Appellant's Right* arises from the Agreement of the Parties, That there shall be a Community of all Goods or Estates, Moveable and Immoveable ; and the additional words, *pursuant to the Custom of Paris*, are but Explanatory of what is meant by the word *Community* ; by referring, for Certainty, only to the Custom ; which does not Enlarge, but only Interpret what is expressly Covenanted in the foregoing words, and is as Binding to the Parties ; and makes as much one entire Contract, as if the particular branches

and

and disposal of the Custom had been Set down therein, and Agreed to, without mentioning the Custom it self.

AND therefore this is humbly conceived not to be a Marriage under the Custom, without express Agreement, as to any part of the Parties Estates, but a particular and express Covenant or Agreement between the Parties, which they intended should be Observed throughout, as well as in one part of it.

AND it is the Performance of this Contract or Agreement that the Appellants Pray (and not to introduce Foreign Customs here) as Binding, any otherwise than by express Agreement.

*AND therefore the APPELLANTS humbly hope they are well Entitled, by Virtue of the said Marriage-Articles or Contract, to be Relieved against the said Decree in this Part ; and to have an Account and Satisfaction as well for the said Moiety of the said Estate in Community and Interest, as to the said 800 Livres and Interest ; and that the said Decree shall, as to that part, be Reversed : All which is most Humbly Submitted to Your LORDSHIPS great Wisdom.*

Jos. AYLOFFE.

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THE  
C A S E

O F

James Foubert, and }  
Charlotte his Wife, } Appel<sup>n</sup>.  
and Others, - - }

A G A I N S T

Tbo. Turft, and }  
Others, --- } Respond.

To be heard on Wednesday  
the 8<sup>th</sup> of December 1703.

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